IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A.O.NO.154 OF 2005

Ranjana Shivaji Aatole .. Appellant
vs.
Shrihari Sakharam Gavade & Ors .. Respondents

Mr.A.A.Kumbhakoni with Mr.A.P.Kulkarni for the Appellant.
Mr.S.M.Oak for the Respondent.

CORAM : A.S.OKA, J.

DATED : 2nd May, 2005.

P.C. :

1. Heard Advocates appearing for the parties. The Appeal is by unsuccessful Defendant No.1. The suit filed by the Respondent No.1 and 2. (The original Plaintiffs) has been decreed by the trial Court. Counter claim preferred by the Appellant and the Original Defendant Nos. 2 to 6 has been dismissed. In the Appeal preferred by the Appellant in First Appellate Court for challenging the Judgment and decree of the trial Court, an application for injunction was made by the Appellant for restraining the Respondent Nos.1 and 2 herein from obstructing the Appellant from taking water from the well in land bearing block No.564. The said application has been rejected by the First

Appellate Court.

2. The learned Counsel appearing for the Appellant submitted that during the pendency of the suit the right of the Appellant to take water from the well in dispute was protected. He submitted that the water pipe line laid for fetching water from the disputed well to the agricultural land of the appellant is still in existence. He submitted that there is no sufficient water available in the well which is situated on the land of the Appellant. The learned counsel appearing for the Respondent No.1 pointed out the statement made in the affidavits filed by the parties in this Court and he submitted that after having failed in the trial court, the Appellant is not entitled to any interim relief.

3. I have considered the rival submissions. The learned Appellate Court has observed that there is a categorical finding recorded that Original Defendant Nos.1 to 6 are not in possession of the suit property and they have no right, title or interest in the suit property. Prima facie finding is recorded by the First Appellate Court that in the operative part of the judgment and decree of the

trial Court, due to error it is mentioned that the Appellant is having a share in the land on which the well is situated.

4. Considering the finding of the trial Court that Original Defendants 1 to 6 are not in possession of the suit property, the First Appellate Court has declined to grant injunction in favour of the Appellant.

5. From the Affidavits filed by the Parties in this Appeal it appears that there is a well available in the property of the Appellant. The only contention of the Appellant is that the water in the said well is not sufficient. After having failed to establish her right, title and interest in the trial Court, the Appellate Court has declined to grant interim relief in favour of the Appellant. The Order passed by the Appellate Court is discretionary order. Considering the reasons recorded by the Appellate Court, no interference is called for.

6. Hence Appeal is dismissed with no order as to costs.

7. Liberty to the Appellants to apply for expeditious hearing of the appeal.

(A.S.Oka, .)